

Environmental Protection Agency

§ 78.3

(d) Questions arising at any stage of a proceeding that are not addressed in this part will be resolved at the discretion of the Environmental Appeals Board or the Presiding Officer.

[58 FR 3760, Jan. 11, 1993, as amended at 60 FR 17132, Apr. 4, 1995; 62 FR 55488, Oct. 24, 1997; 66 FR 12978, Mar. 1, 2001]

§ 78.2 General.

Part 72 of this chapter, including §§ 72.2 (definitions), 72.3 (measurements, abbreviations, and acronyms), 72.4 (Federal authority), 72.5 (State authority), 72.6 (applicability), 72.7 (new units exemption), 72.8 (retired units exemption), 72.9 (standard requirements), 72.10 (availability of information), and 72.11 (computation of time), shall apply to this part.

§ 78.3 Petition for administrative review and request for evidentiary hearing.

(a)(1) The following persons may petition for administrative review of a decision of the Administrator that is made under parts 72, 74, 75, 76, and 77 of this chapter and that is appealable under § 78.1(a) of this part:

(i) The designated representative for the unit covered by the decision;

(ii) The authorized account representative for an account covered by the decision; and

(iii) Any interested person.

(2) The following persons may petition for administrative review of a decision of the Administrator that is made under part 73 of this chapter and that is appealable under § 78.1(a):

(i) The authorized account representative for any Allowance Tracking System account covered by the decision; and

(ii) With regard to the decision on the allocation of allowances from the Conservation and Renewable Energy Reserve, the certifying official whose application is covered by the decision.

(b)(1) Within 30 days following issuance of a decision under § 78.1 of this part by the Administrator, any person under paragraph (a) of this section may file a petition with the Environmental Appeals Board for administrative review of the decision. If no petition for administrative review of a decision under § 78.1 of this part is filed

within such period, the decision shall become final agency action and shall not meet the prerequisite for judicial review under § 78.1(a)(2).

(2) The petition may include a request for an evidentiary hearing to resolve any disputed issue of material fact concerning the decision.

(3) At the same time that the petition for administrative review is filed, the petitioner shall:

(i) Serve a copy of the petition on the designated representative or authorized account representative under paragraph (a)(1) and (2) of this section (unless the designated representative or authorized account representative is the petitioner) and the Administrator; and

(ii) Mail a notice of the petition to the air pollution control agencies of affected States and any interested person.

(c) The petition for administrative review under this part shall state with specificity:

(1) Each material factual and legal issue alleged to be in dispute and any such factual issue for which an evidentiary hearing is sought;

(2) A clear and concise statement of the nature and scope of the interest of the petitioner;

(3) A clear and concise brief in support of the petition, explaining why the factual or legal issues are material and, if an evidentiary hearing is requested, why direct and cross-examination of witnesses is necessary to resolve such factual issues;

(4) If an evidentiary hearing is requested, the time estimated to be necessary for an evidentiary hearing;

(5) If an evidentiary hearing is requested, a certified statement that, in the event of an evidentiary hearing, and without cost or expense to any other party, any of the following persons shall be available to appear and testify:

(i) The petitioner; and

(ii) Any officer, director, employee, consultant, or agent of the petitioner.

(6) Specific references to the contested portions of the decision; and

(7) Any revised or alternative action of the Administrator sought by the petitioner as necessary to implement the